STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMMISSION'S PROPOSED RULEMAKING CONCERNING DISCONNECTION OF A LOCAL EXCHANGE CARRIER BY ANOTHER LOCAL EXCHANGE CARRIER, NOTICE OF BANKRUPTCY, RELINQUISHMENT OF SERVICE, AND REVOCATION OF CERTIFICATE OF TERRITORIAL AUTHORITY, WITH SPECIAL PROVISIONS FOR A LOCAL EXCHANGE CARRIER THAT IS A PROVIDER OF LAST RESORT	)	**IURC RM #06-02**

REPLY COMMENTS OF VERIZON AND EMBARQ TO THE OUCC'S ADDITIONAL INITIAL COMMENTS

Verizon North Inc., Contel of the South, Inc. d/b/a Verizon North Systems, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. d/b/a Verizon Business Services (collectively, "Verizon") and United Telephone of Indiana, Inc. d/b/a Embarq ("Embarq"), by their undersigned counsel, respectfully submit the following reply comments to the Additional Initial Comments of the Indiana Office of Utility Consumer Counselor ("OUCC") filed August 31, 2006, regarding the proposed amendments to the Commission's disconnection rules ("Disconnection Rules").

170 IAC 7-6-3 Notice to the commission; notice to customers

The Commission should reject the OUCC's proposed revisions to 170 IAC 7-6-3 relating to the impact of settlement discussions between the local exchange carrier ("LEC") subject to disconnection and the disconnecting LEC. The OUCC has proposed that if the two LEC parties pursue settlement negotiations after the disconnecting LEC has served a disconnection notice upon the LEC subject to disconnection, the disconnecting LEC would be required to issue and file with the Commission a new notice of a threatened wholesale service disconnection, and wait another 30 days before disconnecting the wholesale provider.

Verizon and Embarq disagree with the OUCC's proposal, which seeks to resolve a problem that would not arise under the existing draft of the proposed rule. As it currently stands, the proposed rule requires that the LEC subject to disconnection provide notice to its customers within ten days after receipt of the disconnection notice. *See* 170 IAC 7-6-3(c). Even if the LEC subject to disconnection and the disconnecting LEC elected to pursue settlement negotiations subsequent to the disconnecting LEC's service of a notice of disconnection, this does not relieve the LEC subject to disconnection from compliance with the customer notification process required in the current version of the proposed rule.[1]

In other words, the current version of the proposed rule does not permit the LEC subject to disconnection to defer the requisite customer notice on the grounds that negotiations with the disconnecting LEC are progressing. Thus, the situation discussed by the OUCC wherein there was a "delay in providing notice to the customers of a LEC facing wholesale service disconnection due to continuing settlement negotiations" (OUCC Additional Comments at 2) would not occur if the LEC subject to disconnection simply complied with the rule as presently drafted, since customer notification is required within ten days after receipt of the disconnection notice regardless of whether settlement discussions are being held. The timeframe provided for consumers to research and select an alternate carrier without the interim danger of losing telecommunications service is not in jeopardy, rendering the OUCC's additional language unnecessary.

[1] This is so unless the payment dispute winds up being fully resolved prior to the 10-day period set forth in 170 IAC 7-6-3, mooting the need for customer notification altogether.

In fact, OUCC's proposed language will be counterproductive to the interests of consumers, because it is apt to cause more disconnections, with the consequence that more consumers will be faced with selecting alternate carriers. Adoption of the OUCC's revisions mandating that the 30-day notice clock be restarted if a disconnecting LEC engages in settlement discussions with a LEC subject to disconnection will create an incentive for the disconnecting LEC to decline to engage in such negotiations in order to minimize the very real financial risk of an additional period of non-payment. The OUCC's proposed changes will thus stifle the likelihood of settlement negotiations between the LEC parties, and increase the likelihood of disconnections proceeding as planned. The Commission should strive to encourage parties to engage in settlement negotiations *prior* to the issuance of a notice of disconnection. The OUCC's proposal would create a contrary incentive, negatively impacting consumers.

Not only is the OUCC's additional language unnecessary and disadvantageous to consumers, it is problematic for both disconnecting LECs and LECs subject to disconnection. Adoption of the OUCC's proposed additional language would create a loophole by which LECs subject to disconnection could delay termination of service indefinitely while still collecting revenue from their end user customers, without paying the disconnecting LEC for the wholesale services being rendered. The LEC subject to disconnection could repeatedly request settlement negotiations with the disconnecting LEC, and thereby stall the disconnection process because the disconnecting LEC would have to re-start the 30-day notice process each time settlement discussions were invoked. This would be particularly unfair in a situation where only a small portion of the unpaid amount is actually in dispute, and there are significant undisputed amounts past due for periods in excess of 90 days. In addition, the reality is that settlement discussions between the disconnecting LEC and the LEC subject to disconnection have normally already taken place prior to the issuance of any disconnection notice. This is what the Commission should strive to encourage, not a situation where the LEC subject to disconnection might benefit from delaying the initiation of settlement discussions.

OUCC's proposed changes assume that disconnection will always occur *immediately* after the 30-day notice period concludes. However, nothing in the current version of the proposed rule requires the disconnecting LEC to effectuate disconnection immediately after the 30-day notice period has run in the event that settlement discussions are continuing. The proposed rule provides only that the disconnecting LEC may not disconnect another LEC *until* 30 calendar days after the disconnection notice is sent; it does not prohibit the disconnecting LEC from waiting longer than 30 days if the settlement negotiations with the LEC subject to disconnection are close to concluding. *See* 170 IAC 7-6-3(e). In addition, paragraph (f) of Section 7-6-3 provides for rescinding the disconnection notice if a settlement is reached, and requires notice to the Commission of such rescission by the disconnecting LEC.

On the other hand, the OUCC's proposed revisions may also give the disconnecting LEC an unfair advantage over the LEC subject to disconnection. As the rule is currently phrased, the LEC subject to disconnection has the option of providing the Commission with a written submission of reasonable grounds for non-payment to the disconnecting LEC. OUCC's proposed revisions would require the LEC subject to disconnection to obtain written confirmation *from the disconnecting LEC* that the LEC subject to disconnection has provided grounds for non-payment, and that the disconnecting LEC has rescinded the disconnection notice as a result. If the disconnecting LEC has unreasonably refused to accept the reasonable grounds for non-payment advanced by the LEC subject to disconnection, the disconnecting LEC certainly will not agree to provide the written confirmation contemplated by OUCC's proposed changes.

The current iteration of the rule recognizes this, and therefore allows the LEC subject to disconnection to present those grounds directly to the IURC for review. OUCC's proposed revisions would allow the disconnecting LEC to preclude the LEC subject to disconnection from presenting those reasonable grounds for non-payment to the Commission simply by refusing to provide written confirmation of their presentation and rescission of the disconnection notice in response to them.[2] Therefore, the OUCC's proposed language addition to this section should be disregarded.

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On a separate note, to ensure that the Commission receives the most accurate information possible with regard to customer identity and contact information, the Commission should insert the word "billed" before the words *name* and *address* in Sections 7-6-3 (b) (2) (A) and (B).

[2] Under OUCC's proposed revisions, the only other option available to the LEC subject to disconnection for advising the Commission of a reasonable basis for non-payment would be to file a formal complaint against the disconnecting LEC. Initiating a formal complaint case would force the LEC subject to disconnection to incur great expense in order to make its position known to the Commission, particularly as compared to the written submission provided for in the current iteration of 170 IAC 7-6-3(a)(3).

Respectfully submitted this 11th day of September, 2006.

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